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UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

ELIZABETH BAKALAR,)
)
Plaintiff,)
)
v.)
)
MICHAEL J. DUNLEAVY, in his)
individual and official capacities;)
TUCKERMAN BABCOCK; and)
the STATE OF ALASKA,)
)
Defendants.)
_____)

Case No. 3:19-cv-00025-JWS

**DECLARATION OF STEPHEN KOTEFF IN SUPPORT OF
APPLICATION FOR ENTRY OF DEFAULT**

I, Stephen Koteff, hereby declare as follows:

1. I am the Legal Director for the America Civil Liberties
Union of Alaska Foundation, attorneys for plaintiff Elizabeth Bakalar
in this action.

2. This action was originally filed in the superior court for the
State of Alaska on January 10, 2019.

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3. In accordance with Alaska Rule of Civil Procedure 4(h), the Complaint and summonses were sent to the Defendants by restricted delivery certified mail on January 18, 2019.

4. In accordance with Alaska Rule of Civil Procedure 4(d)(7) and (8), separate copies of the Complaint and a separate summons were addressed to defendant Michael J. Dunleavy, defendant Tuckerman Babcock, the Attorney General of the State of Alaska at each of his Anchorage and Juneau locations, and the chief of the Attorney General's office in Anchorage.

5. The United States Postal Service confirmed that, except for the copies of the Complaint and summons addressed to the Attorney General in Juneau, all of the copies of the Complaints and summonses were received on January 22, 2019. The United States Postal Service confirmed that the copies of the Complaint and summonses addressed to the Attorney General in Juneau were received on January 23, 2019.

6. On February 5, 2019, counsel for Defendants informed me that she did not believe that Defendants Dunleavy and Babcock were served in their individual capacities in accordance with Alaska Rule of Civil Procedure 4. *See* Email from Linda J. Johnson to Stephen Koteff, February 5, 2019, attached to this Declaration as Exhibit 1.

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Nevertheless, Defendants' counsel indicated that she would accept service on the individual Defendants via email. *Id.*

7. On February 6, 2019, Defendants removed this case to this Court. [DK 6]

8. On February 22, 2019, I sent copies of the Complaints and summonses to Defendants' counsel via email, as requested, to effect service on Defendants Dunleavy and Babcock in their individual capacities. *See* Email from Stephen Koteff to Linda J. Johnson, with attachments, February 22, 2019, attached hereto as Exhibit 2. In my email to Defendants' counsel I explicitly reiterated Plaintiff's position that Defendants Dunleavy and Babcock had been properly served on January 22, 2019. *Id.*

9. The time within which Defendants could plead or otherwise defend this action has expired without such action by Defendants. Pursuant to Federal Rule of Civil Procedure 81(c), this time expired "21 days after receiving—through service or otherwise—a copy of the initial pleading stating the claim for relief," or "7 days after the notice of removal is filed," whichever period is longer. Fed. R. Civ. P. 81(c)(2)(A) and (B). Accordingly, Defendants' time expired on February 13, 2019.

10. Even assuming that Defendants are correct in asserting that Defendants Dunleavy and Babcock were not properly served on February 22, 2019, Defendants' time to plead or otherwise defend this action expired on March 15, 2019, 21 days after Defendants' counsel accepted service on behalf of the individual Defendants.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 19, 2019.

By: s/Stephen Koteff
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